

#### § 4.303

not, however, claim an interest less than the decedent's total interest in any one individual tract.

(3) The tribe must file a written notice of purchase with the Superintendent, together with the tribe's certification that copies have been mailed on the same date to the administrative law judge or Indian probate judge and to the affected heirs or beneficiaries. Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or beneficiaries.

#### § 4.303 Notice by surviving spouse to reserve a life estate.

When the heir or beneficiary whose interests are subject to the tribal option is a surviving spouse, the spouse may reserve a life estate in one-half of such interests. The spouse must file a written notice to reserve with the Superintendent within 30 days after the tribe has exercised its option to purchase the interest in question, together with a certification that copies thereof have been mailed on the same date to the administrative law judge or Indian probate judge and the tribe. Failure to timely file a notice to reserve a life estate will constitute a waiver thereof.

#### § 4.304 Rehearing.

Any interested party aggrieved by the probate decision may, within 60 days from the date of the probate decision, file with the administrative law judge or Indian probate judge a written petition for rehearing in accordance with § 4.241.

#### § 4.305 Hearing on tribal option to purchase interests.

(a) *Demand for hearing.* Any interested party aggrieved by the exercise of the tribal option to purchase the interests in question or the valuation of the interests as set forth in the valuation report may file with the administrative law judge or Indian probate judge a written demand for hearing. The demand must:

(1) Be filed within 60 days from the date of the probate decision or 60 days from the date of the decision on rehearing, or within 20 days from the date the tribe exercises its option to purchase

#### 43 CFR Subtitle A (10-1-08 Edition)

available interests, whichever is applicable;

(2) Include a certification that copies of the demand have been mailed on the same date to the Superintendent and to each interested party; and

(3) State specifically and concisely the grounds upon which it is based.

(b) *Notice of hearing.* The administrative law judge or Indian probate judge must, upon receiving a demand for hearing:

(1) Set a time and place for the hearing after expiration of the 60-day period fixed for the filing of the demand for hearing as provided in § 4.305(a); and

(2) Mail a notice of the hearing to all interested parties not less than 30 days in advance.

(c) *Burden of proof at the hearing.* At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(d) *Decision after hearing; appeal.* (1) Upon conclusion of the hearing, the administrative law judge or Indian probate judge will issue a decision that determines all of the issues including, but not limited to:

(i) The fair market value of the interests purchased by the tribe; and

(ii) Any adjustment of the fair market value made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests.

(2) The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§ 4.310 through 4.323.

(3) The administrative law judge or Indian probate judge must lodge the complete record relating to the demand for hearing with the LTRO as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each interested party.

#### § 4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with § 4.305, whichever is applicable.

## Office of the Secretary, Interior

## §4.310

Payment must be made within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever is later.

### §4.307 Title.

(a) Upon payment by the tribe of the interests purchased, the Superintendent must:

(1) Issue a certificate to the administrative law judge or Indian probate judge that payment has been made; and

(2) File with the certificate all supporting documents required by the administrative law judge or Indian probate judge.

(b) After receiving the certificate and supporting documents, the administrative law judge or Indian probate judge will:

(1) Issue an order that the United States holds title to the interests in trust for the tribe;

(2) File the complete record, including the decision, with the LTRO as provided in §4.236(b);

(3) Furnish a duplicate copy of the record to the Superintendent; and

(4) Mail a notice of the action together with a copy of the decision to each interested party.

### §4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

Cross Reference: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Director of the Bureau of Indian Affairs.

### GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 70 FR 11825, Mar. 9, 2005, unless otherwise noted.

### §4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is:

(1) For most documents, the date of mailing or the date of personal delivery; or

(2) For a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e), the date that the Board receives the motion.

(b) *Serving notices of appeal and pleadings.* Any party filing a notice of appeal or pleading before the Board must serve copies on all interested parties in the proceeding. Service must be accomplished by personal delivery or mailing.

(1) Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party.

(2) Where a party is represented by more than one attorney, service on any one attorney is sufficient.

(3) The certificate of service on an attorney or representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document:

(1) The day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included;

(2) The last day of the period is to be included, unless it is a nonbusiness day (e.g., Saturday, Sunday, or Federal holiday), in which event the period runs until the end of the next business day; and

(3) When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal holidays, and other nonbusiness days are excluded from the computation.

(d) *Extensions of time.* (1) The Board may extend the time for filing or serving any document except a notice of appeal.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.